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Wanted: A 51st State for

By Waverley Root

PARIS (IHT) — A straw vote has just been taken, accidentally, on the attitude of Americans abroad to the new tax laws which confer upon them the privilege of paying on their incomes higher taxes than are paid by Americans in the United States. The vote's mathematical result could hardly be simpler: opposed to the present legislation, 100%; in favor, zero.

I refer to this poll as accidental because it was not taken on purpose. These uncomplicated figures are derived from the letters which I have received from France, Belgium, the Netherlands, Britain, Switzerland, Italy, Spain, Andorra and Morocco in reaction to my article, "American Dilemma Abroad: Go Home, Go Native or Go Broke" (IHT, June 23-24).

I assume that the reason why I have received personally so many more letters than were addressed to the Letters department of the International Herald Tribune is that the correspondents were not particularly anxious to have their names printed publicly in association with the sentiments they expressed — for instance, the woman who referred to our respected legislators as "those rascals," or the man who wrote that for the tempering of his intolerable tax situation "I count rather on the flexibility of the French than on the good sense or justice of American officials." Big Brother may not be watching us, but I gather that a good many Americans think he is.

No names will be cited in this article.

The volume of the mail I have received on this subject obliges me to apologize to readers for being unable to answer them individually. At the same time, I thank those persons who have invited me for everything from a friendly cocktail to an opportunity to speak to groups of indignant American citizens in one country or another. (I am unable to accept, since I have been confined to my apartment for the last four years with back trouble.)

Unanimous

The unanimity of opinion is astonishing. Ordinarily there are dissenters from any point of view, however reasonable. In this case, not one correspondent has expressed the slightest disagreement with the opinion that Americans abroad are being unfairly treated. I had thought some persons might credit the law with extenuating circumstances because of such provisions as the one which makes allowances for the difference in cost of living between foreign countries and the United States; but this was not the case.

Only one correspondent referred to these measures at all. "The deductions allowed for overseas residents," he wrote, "only take recognition of a few of the facts of life of living overseas, but many of the deductions allowed to residents [of the United States] are not possible to take" if you live abroad. It is the unanimous verdict that the new laws are bad *in toto*, vicious in every aspect.

I had been prepared also for possible personal abuse for having even envisaged the unpatriotic prospect of changing nationality. Injurious letters are very easy to write, and I have had my share of them in 52 years of journalism. There was not one. On the contrary, two writers even egged me on. One woman thought a change of nationality would be an appropriate form of protest. "If you must give up your American citizenship," she wrote, "then it will be America's loss and any other country's gain." Thank

you, Madam, but it would be my own estimate that any such defection on my part would go unremarked by both countries; in any case, no defection is going to occur.

It was also a woman who wrote (with a sense of humor which, I should perhaps explain, was, from its context, obviously sympathetic rather than derisory): "What's in a name? . . . By simply translating it you could acquire a very illustrious one. So, if you can't go home again, don't hesitate to go native and become Vaguelement Racine." "Root" is easy to translate, but "Waverley" of course presents problems. I do not know how the French government, which has narrow views about what is permissible in the way of first names, would receive "Vaguelement," although I find it rather attractive myself. But changing my name would be non-solution; my inbred Americanism would remain. I agree with one of my correspondents: "I feel that I could change the color of my skin quicker than I could change my passport."

Changing Nationality

None of my correspondents, however harassed ("This tax mess. . . is one hell of a worry hanging over our heads," writes one), admits any intention of changing nationality. "I was brought up to believe that being an American was a very privileged thing," a correspondent said, "and I find it extremely hard to consider giving up my citizenship. Yet I am in a dilemma. . . of not being able to afford to move back to the States, nor can I continue to pay double taxes." Another remarks that the new law inhibits American freedom of movement: "We pay taxes in the U.S. for the privilege of holding a U.S. passport, but what use is it if we can't live where we please?"

Among the persons who wrote me were several exercising functions which would make their presence abroad, I should think, assets to the United States. There were, for instance, three university professors. I can think of few professions in which Americans abroad could be more useful in contributing to American prestige, which needs support these days. Unfortunately, professors everywhere are likely to be underpaid; they are particularly vulnerable to the added burden now being imposed on them. It is doubtful that it is to the interest of the United States to force them to return home; it is certainly not to theirs.

One of them has held his chair in a European university for 19 years, another for 14; the third did not say how long he has been teaching in Europe. These missionaries of Americanism are now faced with the agonizing prospect of being obliged to abandon secure, established situations and return to an America where universities are experiencing a crisis and faculty members are locked in a ferocious fight for tenure.

European Wives

European wives are cited often among the reasons which make a return to the United States difficult, a problem which is frequently complicated by that of age: A young woman can change countries and adapt to the shift, but an older woman can't, and shouldn't be asked to try.

I discover from my mail that a typical group of Americans abroad is made up of those who have elected to retire in Europe, which usually implies more or less advanced age. Some of them acquired unimproved property, worked on it for several years to be sure of having a comfortable setting for old age — and find them-



Pershing Portrait for Sale

to help pay taxes

selves now threatened with the necessity of abandoning the refuge they had been foresighted enough to establish and returning to a United States where they are too old to start life over again.

A number of letters propose ingenious schemes for circumventing the tax collector. I must discourage such hopeful citizens by pointing out that an individual has little chance of outwitting a bureaucracy which is paid to think full time of such devices before taxpayer do, and to plug the loopholes. "I could add to that title ['Go Home, Go Native or Go Broke']," writes one correspondent, "Go Nomad — keep no fixed residence and therefore avoid taxes altogether." Aside from the fact that this sounds as if it might be more expensive than paying excessive taxes, while most of us are too tied down by material possessions to be able to flit lightly from country to country (the easiest system would be to live on a mobile houseboat), the nomad not only would not escape taxes, he would pay more than his sedentary countrymen.

The pinch for Americans abroad does not come primarily from foreign laws, but from the United States law — and Washington doesn't care whether you have a fixed residence or not. If you live outside the country you are now stuck with the new tax schedule whether you move around or stay put. In the second case you pay part of it to a foreign government and the balance to the United States. If you move around, you pay all of it to the United States — and you lose the cost-of-living adjustment applicable to the country in which you would otherwise live. You can't fight City Hall.

"I feel very strongly that there must be some element in this which is illegal," one man writes, expressing an idea repeated in several other letters. Two ask directly if the new law is not unconstitutional, and one writer even offers to "work through my own taxes to make a test case," which I suppose would involve refusal to pay taxes on constitutional grounds, thus pre-

voking a court ruling on the issue. A feeling, however, strong though it may be, is no sound basis for legal action. I fear that the man who is willing to risk the role of martyr would be jeopardizing himself uselessly.

I am old enough to remember the Golden Age before income tax existed in the United States, though I had not quite reached taxpaying age (I was ten). When Congress enacted a law instituting income tax, the Supreme Court declared its very principle unconstitutional. The result was the 26th Amendment, which reads in full: "The Congress shall have power to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States, and without regard to any census or enumeration." This would seem to permit Congress to do almost anything it wants in this domain, without regard to justice or injustice, and without regard to wisdom or folly — though these terms are not specifically employed in the language of the law.

It is possible that there are other legal bases for contesting a law which, in the words of one correspondent, "creates in effect a second-class citizenship." Could this be held to constitute a bill of attainder against a certain class of citizens, an act forbidden by Article One, Section Nine of the Constitution? I fear not.

Could the Fourth Amendment ("The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures") be extended to cover a situation in which individuals are unreasonably obliged to divest themselves of painfully acquired material situations? I should think it dubious.

Fifth Amendment

What would happen to anyone who refused to fill out Form 90-22, which requires him to reveal the location of any bank account in which he holds an interest of more than \$1,000, on the ground that the Fifth Amendment absolves him from self-incrimination? I suspect he would discover that the inquisitorial powers granted to the Internal Revenue Service are greater than those allowed to other departments.

If there is a legal weak point in the present legislation, it may lie in its unintelligibility.

There exists somewhere in the labyrinth of laws which contribute to make the United States (and most other large and complicated nations) ungovernable (the United States is not governed, it is drifting), a statute whose essence, I believe, is that a law which cannot be understood cannot be enforced. Since I did not anticipate becoming involved in this question, I did not file material on this law when I came across it some time ago. I seem to recall vaguely that the words "Federal Practices" occur somewhere in its title. I would suggest that tax lawyers discontented with the present legislation investigate in this direction.

Comprehensibility is certainly not a fault of our present legislation. One of my correspondents was skeptical about my report that the Franco-American tax treaty was not understandable, so he procured a copy of it, and phoned me to say that it was indeed unintelligible. That treaty has been passed (IHT, July 10) under a rule of unanimous consent, which means in practice without inspection and without debate, in a package containing, I think, four such treaties. It contains, according to this report, which I assume is correct, one feature which will be welcome to Americans in France, concerning which I have misinformed some per-

sons on the basis of earlier conflicting stories: the renunciation by France of the right to tax U.S. Social Security payments to Americans resident in France.

For the rest, a similar agreement by France not to tax Americans for earned income from an American source means for the individual taxpayer only that he will pay his full tax on this income to America, not partly to France; it represents simply an agreement between the two countries on the division of the swag. I admit that I am unable to understand the status of American citizens in France in regard to income from investments in the United States, or anything at all about the tax treaty with Britain.

As for the tax law, it "virtually forces you to have a tax adviser, even if you cannot afford it," writes one reader. "I spent a total of 60 hours and had to make three trips to the embassy to clarify the new instructions. Even then, just after finishing my tax schedules, an article in the Herald Tribune... made it clear that I had not done it correctly." This presumably refers to a recent story (IHT, June 2-3) which in a column and a half gave more precise, useful information than the tax administration had succeeded in providing in the 44 pages of instructions and forms provided to all American taxpayers plus the 52 pages of supplemental information for Americans abroad.

"No taxation without representation" is an emotional slogan, not a legal principle, though it deserves to be. I was nevertheless a little surprised that only one letter writer brought it up. Congress seems to have been successful in defusing this issue by passing, a few years ago, legislation to permit American citizens abroad to vote by mail, which some legislators admitted candidly at the time was intended to set up overseas Americans for taxation.

Unfortunately the law is not uniformly operative, and even if it were it would not provide effective representation. The machinery of voting, even for federal offices, is handled by the states; some of them obstruct absentee voting, others have timetables for registration, filing of candidatures and the like which make it virtually impossible for them to get ballots to overseas Americans in time. Foreign residents of long standing may not have a right to vote in any specific state.

Disenfranchised

Even those overseas Americans who succeed in voting are not effectively represented. Consider the realities of the case: Of the total number of votes cast for any given senator or representative, what percentage will come from abroad? It is obvious that it will be so small that he will have no incentive to support any issues specifically important to overseas voters. In practice, up to now, he has not.

Americans living in foreign countries are in fact disenfranchised and will remain so until and unless they are considered as representing a 51st state, with two senators and as many representatives as their numbers justify. Absurd? But there is a movement afoot now to give this status to the District of Columbia. Residents of the District who enjoy no residence elsewhere should certainly be given a right to vote, but to allot them two senators seems ludicrous. Why not include them within the 51st state of out-of-bounds Americans?

It is surprising, in a way, that my article aroused so much response among Americans abroad, for it did not attack the question direct-

ly. It sidled up to it on the sentimental bias of the despair of a dyed-in-the-wool American at seeing his legislators conspiring to drive him out of his ancestral heritage. I seem not to be alone in this situation. Several of those who have written me have similar backgrounds, including one who predates me: My family goes back in America to 1635, but his to 1607 — Virginia, of course.

The role played by his first American ancestor was so important that I cannot describe it without giving his identity away, so let me content myself with reporting that on his mother's side his family comes from New England, and that the two branches together have given to the nation "a statesman, an ambassador, attorneys and professors." Another American of long standing represents Texas. Her family has defended the Alamo twice — once at the time of the original tragedy, and in this generation to save it from being converted into a department store. Another reader admits that he cannot claim American lineage which goes back to the 17th century, but that all the same his family has contributed a secretary of state (whose name I suppress to preserve the anonymity of the writer), as well as several respected scientists and a number of eminent businessmen.

Nobody Listening

The most unexpected reaction I received was from a correspondent who had been most impressed by the fact that my father's cousin had married Gen. Pershing. (He did take time, however, to complain about the vagaries of the dollar, which also bothered several other correspondents). He offered for sale a portrait of the general, vintage 1918. A photograph of the object was enclosed.

As things stand now, the indignation being expressed unanimously by Americans abroad finds no listeners among the congressmen who made the present law and could unmake it if they wanted to. "We all know of many U.S. citizens serving their country's interests abroad (whether in government, business or the arts)," one correspondent writes me, "who have been obliged to return home simply because of these new fiscal measures. I share your concern on this matter (my wife incidentally is also French and my family has been in the U.S. Foreign Service for many generations) and I hope your article will stimulate sufficient interest to bring about some remedy in the tax laws."

It won't.

How do I know? Because my article appeared in The Washington Post before it was printed in the International Herald Tribune. Would you like to know how many letters The Post article brought in?

None.

The fact is that in the United States nobody is listening. Why should they be? The tax problems of Americans overseas do not touch Americans at home; and indeed most Americans at home do not realize that we have any. One of my correspondents wrote: "I have been writing continuously to a variety of senators complaining about the tax laws." He has had no replies. When I read myself that Sen. George McGovern had shown interest in the difficulties of Americans abroad (IHT May 12-13), despite a long journalistic experience which has made me cynical about the seriousness of such political gestures, I wrote him on May 13 offering to inform him on the practical consequences for American citizens abroad of the present tax law. His answer must have been lost in the mails.